

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
CITY OF BROOKINGS, SOUTH DAKOTA AND
BROOKINGS COUNTY, SOUTH DAKOTA

1. PARTIES

This Memorandum of Understanding (MOU) is entered into by and between the City of Brookings, South Dakota (hereinafter "City"), and Brookings County, South Dakota (hereinafter "County").

WHEREAS, the City has been awarded a federal "Better Utilizing Investments to Leverage Development (BUILD) grant, referred to in this MOU as the "GRANT," in the amount of Eighteen Million Six Hundred Seventy-seven Thousand Six Hundred Thirty Dollars (\$18,677,630.00) towards the construction of a new interchange at Interstate 29 (I-29) and 20th Street South (the "Project"); and

WHEREAS, the City, in combination with Brookings County and private development partners, have committed a local match in the amount of Four Million Six Hundred Sixty-nine Thousand Four Hundred Seven Dollars (\$4,669,407.00) for the Project, and

WHEREAS, the Project has the following approximate deliverable dates:

- 30% Review Plans: September 2020
- 60% Review Plans: November 2020
- Release to Right-of-Way: December, 2020
- 95% Structure and Final Plans to SDDOT for Review: February, 2021
- Project Ready Date: June 15, 2021
- Anticipated Bid Date: September 15, 2021

NOW THEREFORE, the parties agree to the foregoing and as follows:

2. PURPOSE

The purpose of this MOU is to set forth the City and County's participation in the cost and authorization of construction of an interstate interchange at 20th Street South on Interstate 29 in the City of Brookings.

3. ESTIMATED COST AND FINANCIAL OBLIGATIONS OF EACH PARTY

The estimated cost share of the County and of the City for design and construction of the Project is Two Million Dollars each, which shall be budgeted and paid by each party as stated herein. The County has sufficient funds to pay its share of the design and construction of the Project. The City also has sufficient funds to pay its share of the design and construction of the Project.

4. MANNER OF FUNDING CITY'S PARTICIPATION

The City's financial participation in the interstate interchange project is contingent upon it approving appropriate funding that is in accordance with the requirements of SDCL Chapter 9 – 21 (Tax Levies and Appropriations) in addition to any other applicable statutory requirements. City agrees to diligently and in good faith endeavor to appropriate such funding as City deems necessary and prudent.

5. MANNER OF FUNDING COUNTY'S PARTICIPATION

The County's financial participation in the interstate interchange project is contingent upon it approving appropriate funding that is in accordance with the requirements of SDCL Chapter 7 – 21 (County Budget and Appropriations) in addition to any other applicable statutory requirements. County agrees to diligently and in good faith endeavor to appropriate such funding as County deems necessary and prudent.

6. PAYMENT OF PROJECT COSTS

While the Project is projected to require City and County financial contributions for Two Million Dollars each, the parties understand and agree that the Project costs could exceed this estimate, and therefore it is appropriate to address the possibility of additional Project costs which exceed the estimated Project costs. In order to clarify the financial obligations of the parties in case of additional construction costs, the geographical boundaries of the Project are as follows:

1. The portion of 20th Street South, which is west of the overpass, up to and including its intersection with 22nd Avenue South, but no further west;
2. The portion of 20th Street South, which is east of the overpass, up to and including its intersection with 34th Avenue South, but no further east;

A) Each party shall pay a percentage share of the cost of designing and constructing the Project, up to in the amount of Two Million Dollars (\$2,000,000) each. The terms and conditions concerning the financial commitment for the Private Sector partners are provided in a separate agreement.

B) The parties expect the project to cost \$23,347,037.00 or less. In the event the cost estimate or actual cost exceeds \$23,347,037.00, the parties will negotiate how much of the excess each party shall pay.

C) The City and County shall review the Engineer's Cost Estimates at the 30%, 60% and 95% Plans stage. The tentative review dates are approximately September 2020 for 30% Plans, November 2020 for 60% Plans and February 2021 for 95% Plans. The dates will be adjusted based on the design timeline. Consent of all parties or their designated representative is of the essence to this agreement, and mandatory for any decisions resulting in excess costs. Consent may be withheld at each cost estimate review date until the parties negotiate and agree on additional financial liability for each party. The parties agree to expedite their consideration of issues related to potential excess costs.

D) Each party shall timely pay its respective share of the Project costs as they become due under the engineering and construction contracts. The City shall invoice the County on a monthly basis for the County's share of the Project costs after they are submitted to the City from the SDDOT.

7. TERMINATION

This Agreement shall continue until Project completion unless otherwise terminated by the parties by mutual agreement.

8. EFFECTIVE DATE

This MOU will be in effect upon full execution of this MOU and will continue in effect until such time the parties mutually terminate this MOU.

9. AMENDMENT

This Agreement may be amended and supplemented from time to time by the action of the governing bodies of the County and City. This MOU may not be amended except in writing, which writing will be expressly identified as a part of this MOU and be signed by an authorized representative of each of the parties.

10. THIRD PARTIES

This MOU is intended to only govern the rights and interest of the parties named herein. It is not intended to, does not and may not be relied upon to create any rights, substantial or procedural, enforceable at law by any third party in any matters, civil or criminal.

The parties have caused this MOU to be executed as of the date of the last signature below.

CITY OF BROOKINGS, SOUTH DAKOTA

BROOKINGS COUNTY

By: Paul Briseno
Its: City Manager

By: Michael Bartley
Its: Chair Brookings County
Board of Commissioners

Date: _____

Date: _____

ATTEST:

City Clerk